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2003 BILL

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- 1 AN ACT to amend 66.0419 (3) (intro.), 196.196 (3) (a) and 196.203 (1); and to
 2 create 66.0419 (3g), 66.0419 (3r) and 196.503 of the statutes; relating to:
 3 ~~granting of cable television franchises and prohibiting passing on municipal~~
 4 ~~telecommunications utility and cable television system costs to noncustomers~~

(existing franchisee)

Analysis by the Legislative Reference Bureau

an applicant

Under current law, cities, villages, and towns (municipalities) are granted the power to regulate cable television systems, including the power to grant franchises to persons who operate such systems and to require the payment of franchise fees. This bill limits this power when a municipality grants a franchise allowing a person to operate a cable television system in an area that is actually served by another person to whom the municipality has previously granted a franchise.

Under such circumstances, the bill provides that certain terms and conditions of the franchise may be no more favorable and no less burdensome than the terms and conditions of the previously granted franchise. The terms and conditions that are subject to the bill are terms and conditions relating to the area for which service is authorized, requirements for public, educational, and governmental access channels, and franchise fees. However, the bill does not prohibit a municipality from imposing terms and conditions that are in addition to the terms and conditions of the previously granted franchise.

This bill also prohibits, with certain exceptions, a municipality that owns and operates a cable television system from passing on the costs of the system to nonsubscribers. There are two exceptions to this prohibition. First, the prohibition

requiring nonsubscribers to pay any of

to the existing franchisee

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(new entrant)

INSERT
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BILL

if the municipality

INSERT 2A

does not apply to a municipality that began operating a cable television system before the effective date of the bill. Second, a municipality that began operating a cable television system on or after the effective date of the bill may pass on the following costs to nonsubscribers: 1) the cost of public, educational, and governmental access channels; and 2) the cost of debt service on public improvement bonds for the construction, renovation, or expansion of the municipality's cable television system.

In addition, the bill prohibits a municipality that owns or operates a telecommunications utility from passing on the costs of the utility to persons who ~~are~~ not customers of the utility. Under current law, with certain exceptions, telecommunications utilities are subject to regulation by the Public Service Commission (PSC). The bill's prohibition applies even if the municipality's telecommunications utility is otherwise exempt from PSC regulation. However, the prohibition does not apply to a municipality that provided telecommunications service to the public before the bill's effective date.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 66.0419 (3) (intro.) of the statutes is amended to read:

2 66.0419 (3) FRANCHISES. (intro.) ~~A~~ Except as provided in sub. (3g), a
3 municipality may operate or regulate a cable television system and in such operation
4 and regulation may, without limitation because of enumeration:

5 SECTION 2. 66.0419 (3g) of the statutes is created to read:

6 66.0419 (3g) DISCRIMINATION PROHIBITED. (a) A municipality may not grant a
7 franchise under sub. (3) (b) ~~authorizing a cable operator to provide cable service in~~
8 ~~an area in which cable service is actually provided by another cable operator under~~
9 ~~a franchise previously granted by the municipality under sub. (3) (b) unless the terms~~
10 ~~and conditions of the franchise that relate to all of the following are no more favorable~~
11 ~~and no less burdensome than the terms and conditions of the previously granted~~
12 ~~franchise:~~

13 1. The area for which cable service is authorized.

do not receive telecommunications service from

INSERT 2B

INSERT 2-7

INSERT 2-6

BILL

INSERT 3-2

1 2. Requirements for public, educational, and governmental access channels.

2 3. Franchise fees.

specified in par. (b) 1. to 3.

3 (b) Paragraph (a) does not prohibit a municipality from granting a franchise
4 under sub. (3) (b) that imposes terms and conditions that are in addition to terms and
5 conditions imposed by a previously granted franchise.

6 SECTION 3. 66.0419 (3r) of the statutes is created to read:

7 66.0419 (3r) MUNICIPAL CABLE TELEVISION SYSTEM COSTS. (a) Except for costs for
8 any of the following, a municipality that owns and operates a cable television system
9 may not ~~pass on the costs of~~ the cable television system to nonsubscribers.

10 1. Public, educational, and governmental access channels.

11 2. Debt service on bonds issued under s. 66.0619 to finance the construction,
12 renovation, or expansion of a municipal cable television system.

13 (b) This subsection does not apply to a municipality ~~that~~ began operating a
14 municipal cable television system before the effective date of this paragraph
15 [revisor inserts date].

16 SECTION 4. 196.196 (3) (a) of the statutes is amended to read:

17 196.196 (3) (a) Except to the extent expressly permitted by this section and ss.
18 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 and, 196.219, and
19 196.503, the commission may not have jurisdiction over the prices or terms and
20 conditions for the offering of any other services, including new telecommunications
21 services, offered by a price-regulated telecommunications utility.

22 SECTION 5. 196.203 (1) of the statutes is amended to read:

23 196.203 (1) Except as provided in this section, alternative telecommunications
24 utilities are exempt from all provisions of ch. 201 and this chapter except s. 196.503.

25 SECTION 6. 196.503 of the statutes is created to read:

INSERT 3-T5

BILL

196.503 Municipal telecommunications utilities. (1) DEFINITION. In this section, “municipal telecommunications utility” means a municipality that owns, operates, manages, or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public.

(2) COSTS. A municipal telecommunications utility may not pass on the cost of any plant or equipment used to provide telecommunications services directly or indirectly to the public to any person who ~~is not a customer~~ of the municipal telecommunications utility, except for debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of such plant or equipment.

(3) APPLICABILITY. This section does not apply to a municipal telecommunications utility that began providing telecommunications service directly or indirectly to the public before the effective date of this subsection [revisor inserts date].

SECTION 7. Initial applicability.

(1) The treatment of section 66.0419 (3) (intro.) and (3g) of the statutes first applies to franchises granted on the effective date of this subsection.

SECTION 8. Effective date.

(1) This act takes effect on the first day of the 3rd month beginning after publication.

(END)

D-note

does not receive
telecommunications
service from

1 (c) "Telecommunications service" has the meaning given in s. 196.01 (9m). ✓

2 (2) No municipality may enact an ordinance authorizing the municipality to
3 construct, own, or operate any facility for providing cable service,
4 telecommunications service, or Internet access service, directly or indirectly to the
5 public, unless all of the following are satisfied: *keep comma* *add comma*

6 (a) The municipality holds a public hearing on the proposed ordinance. ✓

7 (b) Notice of the public hearing is given by publication of a class 3 notice under
8 ch. 985 in the area affected by the proposed ordinance. ✓

9 (c) No less than 30 days before the public hearing, the municipality prepares
10 and makes available for public inspection a report estimating the total costs of, and
11 revenues derived from, constructing, owning, or operating the facility and including
12 a cost-benefit analysis of the facility for a period of at least 3 years. ✓

2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/3ins
MDK:.....

INSERT 1-3:

5 municipal telecommunications utilities, and public hearings for ordinances
authorizing municipal cable television, telecommunications, and Internet access
facilities

INSERT 1A:

The bill defines a person who has previously been granted a franchise as an "existing
franchisee" and the person applying for a franchise to serve the same area as a "new
entrant".

INSERT 1B:

To comply with the bill, a municipality is allowed to adjust the terms and conditions
of a franchise previously granted to an existing franchisee. In addition, with respect
to terms and conditions relating to the area for which service is authorized, the bill
allows a municipality to establish deadlines for a new entrant to comply on a gradual
basis with such terms and conditions. ~~In addition,~~

INSERT 1C:

The prohibition also applies to any entity owned, operated, or controlled, in whole or
in part, by such a municipality.

INSERT 2A:

or entity may require nonsubscribers to pay the following costs:

INSERT 2B:

Finally, the bill prohibits a municipality from enacting an ordinance
authorizing the municipality to construct, own, or operate any facility for providing
cable television service, telecommunications service, or Internet access service,
directly or indirectly to the public, unless certain requirements are satisfied. First,
the municipality must hold a public hearing on the ordinance and provide at least
3 notices of the hearing. Second, the municipality must prepare a report estimating
the total costs of, and revenues derived from, constructing, owning, or operating the
facility. The report must include a cost-benefit analysis of the facility for a period
of at least 3 years. At least 30 days before the public hearing, the municipality must
make the report available for public inspection.

INSERT 2-6:

3
3 (a) In this subsection:

1. "Existing franchisee" means a cable operator who has been granted a
franchise by a municipality to provide cable service in an area.

(b) “Municipality” means a city, village, or town.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/3dn

MDK:/:....

cjs

Rep. Suder:

Please note the following about this version of the bill:

1. The public hearing for an ordinance must be preceded by a class 3 notice, which means that 3 weekly notices must be published in a newspaper, with the last notice published at least one week before the hearing. Is that okay? You could require, instead, one or 2 weekly notices (i.e., class 1 or 2 notices).
2. Note that this version requires a municipality to prepare a report with estimates of the total costs and revenues of a facility proposed by a municipality, in addition to a 3-year cost-benefit analysis. If total costs and revenues must be estimated, why do you also want to require a 3¹/₂-year cost-benefit analysis? In addition, it might be advisable to provide more detail on what is required for the cost-benefit analysis.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/3dn
MDK:cjs:pg

August 5, 2003

Rep. Suder:

Please note the following about this version of the bill:

1. The public hearing for an ordinance must be preceded by a class 3 notice, which means that 3 weekly notices must be published in a newspaper, with the last notice published at least one week before the hearing. Is that okay? You could require, instead, one or 2 weekly notices (i.e., class 1 or 2 notices).
2. Note that this version requires a municipality to prepare a report with estimates of the total costs and revenues of a facility proposed by a municipality, in addition to a 3-year cost-benefit analysis. If total costs and revenues must be estimated, why do you also want to require a 3-year cost-benefit analysis? In addition, it might be advisable to provide more detail on what is required for the cost-benefit analysis.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Nancy Magestro

From: <Lorenzo.Cruz@centurytel.com>
To: "Nancy Magestro" <nmagestro@chartermi.net>
Sent: Tuesday, August 12, 2003 9:23 AM
Subject: RE:Fw: Cable draft

Nancy,

Could you please forward these changes to Tom H. and Tom M..

We propose replacing Section 196.503 (2) with the following:

(2) COSTS. A municipal telecommunications utility shall recover from charges to subscribers of its telecommunications services all costs of providing such services including the costs of acquiring, installing, maintaining, repairing, and operating any plant and equipment used in the provision of telecommunications service as well as a reasonable allocation of the municipality's shared and common costs. Such costs shall not be recovered directly or indirectly from any person who does not receive telecommunications service from the municipal telecommunications utility, except for debt service on funds issued under s. 66.0619 to finance the construction, renovation or expansion of plant or equipment used in the provision of the telecommunications service.

+ personnel

Also to stay consistent, additional language should also be inserted in Section 66.0422 (2) (c) as follows

(c) No less than 30 days before the public hearing, the municipality prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from constructing, owning, and operating the facility, such costs to include a reasonable allocation of the municipality's shared and common costs, and including cost-benefit analysis of the facility for a period of at least 3 years

8/12/2003

Kunkel, Mark

From: BECK, STEVE (Legal) [sb3679@sbc.com]
Sent: Thursday, August 14, 2003 1:56 PM
To: 'mark.kunkel@legis.state.wi.us'
Subject: Muni telcos



Cable Draft
PDF.pdf



inserts into
proposed bill1.do...

<<Cable Draft PDF.pdf>> <<inserts into proposed bill1.doc>>
* requiring muni telcos to price above TSLRIC, like other utilities do
* requiring TSLRIC to include the costs we face that muni telcos do
not -- taxes, rights of way, etc.
* including counties by incorporating the chapter 66 definition of
municipality (the ch. 196 definition excludes them)

Steve Beck
Senior Counsel
SBC Wisconsin

Insert A:

(b) In this section, "municipality" has the meaning given in s. 66.0621(a).

Insert B:

Notwithstanding any exemptions identified in this chapter, each telecommunications service offered by

Insert C:

shall be priced to exceed its total service long-run incremental cost. Such total service long-run incremental cost shall take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by telecommunications providers that are not municipalities.

2003 - 2004 Legislature

- 3 -

LRB-16637
MDK:qg:pg
SECTION 3

BILL

1 SECTION 3. 196.196 (3) (a) of the statutes is amended to read:

2 196.196 (3) (a) Except to the extent expressly permitted by this section and ss.
3 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 and, 196.219, and
4 196.503, the commission may not have jurisdiction over the prices or terms and
5 conditions for the offering of any other services, including new telecommunications
6 services, offered by a price-regulated telecommunications utility.

7 SECTION 4. 196.203 (1) of the statutes is amended to read:

8 196.203 (1) Except as provided in this section, alternative telecommunications
9 utilities are exempt from all provisions of ch. 201 and this chapter except s. 196.503.

10 SECTION 5. 196.503 of the statutes is created to read:

includes counties 11 196.503 Municipal telecommunications utilities. (1) DEFINITION. ^{S (a)} In this
12 section, "municipal telecommunications utility" means a municipality that owns,
13 operates, manages, or controls any plant or equipment used to furnish
14 telecommunications services within the state directly or indirectly to the public. ^{Insert A}

15 (2) COSTS. ^{Insert B} ~~A municipal telecommunications utility may not pass on the cost of~~
16 ~~any plant or equipment used to provide telecommunications services directly or~~
17 ~~indirectly to the public to any person who is not a customer of the municipal~~
18 ~~telecommunications utility, except for debt service on bonds issued under s. 66.0619~~
19 ~~to finance the construction, renovation, or expansion of such plant or equipment.~~

20 (3) APPLICABILITY. This section does not apply to a municipal
21 telecommunications utility that began providing telecommunications service
22 directly or indirectly to the public before the effective date of this subsection
23 [revisor inserts date].

24 SECTION 6. Initial applicability.

Kunkel, Mark

From: BECK, STEVE (Legal) [sb3679@sbc.com]
Sent: Thursday, August 14, 2003 2:42 PM
To: 'mark.kunkel@legis.state.wi.us'
Cc: BLAVAT, KATHRYN R (AIT)
Subject: RE: Muni telcos

Mark,

Your point about "notwithstanding any other exemption" is a good one. I find no relevant exemption, so the phrase appears unnecessary.

I double checked 196.015, and have confirmed our suggestions are consistent with it.

A new thought: the definition of muni Telco utility should probably be broadened to include Telco utilities owned by munis, a la 196.377(2)(a)3.

Please do not hesitate to call if you have any further concerns you would like to discuss.

Thanks,
Steve Beck
Senior Counsel
SBC Wisconsin

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> -----Original Message-----

> From: BECK, STEVE (Legal)
> Sent: Thursday, August 14, 2003 1:56 PM
> To: 'mark.kunkel@legis.state.wi.us'
> Subject: Muni telcos

> << File: Cable Draft PDF.pdf >> << File: inserts into proposed bill1.doc
> >>

> * requiring muni telcos to price above TSLRIC, like other utilities do
> * requiring TSLRIC to include the costs we face that muni telcos do
> not -- taxes, rights of way, etc.
> * including counties by incorporating the chapter 66 definition of
> municipality (the ch. 196 definition excludes them)

> Steve Beck
> Senior Counsel
> SBC Wisconsin

Bu TWS 8/19
4:30

2003 - 2004 LEGISLATURE

NOTE

2003 BILL

LRB-1663/3
MDK:cjs:18

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local government

1 AN ACT *to amend* 66.0419 (3) (intro.), 196.196 (3) (a) and 196.203 (1); and *to*
2 *create* 66.0419 (3g), 66.0419 (3r), 66.0422 and 196.503 of the statutes; **relating**
3 **to:** cable television franchises, ~~municipal~~ telecommunications utilities, and
4 public hearings for ordinances, authorizing ~~municipal~~ *local government* cable television,
5 telecommunications, and Internet access facilities.

Analysis by the Legislative Reference Bureau

Under current law, cities, villages, and towns (municipalities) are granted the power to regulate cable television systems, including the power to grant franchises to persons who operate such systems and to require the payment of franchise fees. This bill limits this power when a municipality grants a franchise allowing an applicant (new entrant) to operate a cable television system in an area that is actually served by another person to whom the municipality has previously granted a franchise (existing franchisee).

The bill provides that certain terms and conditions of the franchise granted to the new entrant may be no more favorable and no less burdensome than the terms and conditions of the franchise previously granted to the existing franchisee. The terms and conditions that are subject to the bill are terms and conditions relating to the area for which service is authorized, requirements for public, educational, and governmental access channels, and franchise fees. To comply with the bill, a municipality is allowed to adjust the terms and conditions of a franchise previously granted to an existing franchisee. In addition, with respect to terms and conditions

BILL

- 2 -

local government

or county (local government)

relating to the area for which service is authorized, the bill allows a municipality to establish deadlines for a new entrant to comply on a gradual basis with such terms and conditions. The bill does not prohibit a municipality from imposing terms and conditions that are in addition to the terms and conditions of the previously granted franchise.

This bill also prohibits, with certain exceptions, a municipality that owns and operates a cable television system from requiring nonsubscribers to pay any of the costs of the system. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by such a municipality. There are two exceptions to this prohibition. First, the prohibition does not apply to a municipality if the municipality began operating a cable television system before the effective date of the bill. Second, a municipality or entity may require nonsubscribers to pay the following costs: 1) the cost of public, educational, and governmental access channels; and 2) the cost of debt service on public improvement bonds for the construction, renovation, or expansion of the municipality's cable television system.

In addition, the bill prohibits a municipality that owns or operates a telecommunications utility from passing on the costs of the utility to persons who do not receive telecommunications service from the utility. Under current law, with certain exceptions, telecommunications utilities are subject to regulation by the Public Service Commission (PSC). The bill's prohibition applies even if the municipality's telecommunications utility is otherwise exempt from PSC regulation. However, the prohibition does not apply to a municipality that provided telecommunications service to the public before the bill's effective date.

Finally, the bill prohibits a municipality from enacting an ordinance authorizing the municipality to construct, own, or operate any facility for providing cable television service, telecommunications service, or Internet access service, directly or indirectly to the public, unless certain requirements are satisfied. First, the municipality must hold a public hearing on the ordinance and provide at least three notices of the hearing. Second, the municipality must prepare a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility. The report must include a cost-benefit analysis of the facility for a period of at least three years. At least 30 days before the public hearing, the municipality must make the report available for public inspection.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

local government

SECTION 1. 66.0419 (3) (intro.) of the statutes is amended to read:

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2Alocal government's
provision of

Service

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local government's

began operating

of adopting a resolution

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1 66.0419 (3) FRANCHISES. (intro.) ~~–A–~~ Except as provided in sub. (3g), a
2 municipality may operate or regulate a cable television system and in such operation
3 and regulation may, without limitation because of enumeration:

4 **SECTION 2.** 66.0419 (3g) of the statutes is created to read:

5 66.0419 (3g) DISCRIMINATION PROHIBITED. (a) In this subsection:

6 1. “Existing franchisee” means a cable operator who has been granted a
7 franchise by a municipality to provide cable service in an area.

8 2. “New entrant” means a cable operator that applies to a municipality for a
9 franchise to provide cable service in an area in which an existing franchisee is
10 actually providing cable service.

11 (b) A municipality may not grant a franchise under sub. (3) (b) to a new entrant
12 unless the terms and conditions of the franchise granted to the new entrant that
13 relate to all of the following are no more favorable and no less burdensome than the
14 terms and conditions of the franchise granted to the existing franchisee:

15 1. The area for which cable service is authorized.

16 2. Requirements for public, educational, and governmental access channels.

17 3. Franchise fees.

18 (c) A municipality may comply with par. (b) by adjusting the terms and
19 conditions of a franchise previously granted to an existing franchisee.

20 (d) Notwithstanding par. (b), a municipality may establish deadlines for a new
21 entrant to comply on a gradual basis with terms and conditions relating to the area
22 for which cable service is authorized if the deadlines are designed to result in no more
23 favorable, and no less burdensome, terms and conditions.

BILL

(e) Paragraph (b) does not prohibit a municipality from granting a franchise under sub. (3) (b) that imposes terms and conditions that are in addition to the terms and conditions specified in par. (b) 1. to 3.

SECTION 3. 66.0419 (3r) of the statutes is created to read:

66.0419 (3r) ~~Municipal~~ LOCAL GOVERNMENT'S CABLE TELEVISION SYSTEM COSTS. (a) Except for costs for any of the following, a municipality ^{or county} that owns and operates a cable television system, or an entity owned or operated, in whole or in part, by such a municipality ^{or county}, may not require nonsubscribers of the cable television system to pay any of the costs of the cable television system:

1. Public, educational, and governmental access channels.
2. Debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of a ~~municipal~~ ^{or county} cable television system.

(b) This subsection does not apply to a municipality ^{or county}, or an entity owned or operated, in whole or in part, by a municipality ^{or county}, if the municipality ^{or county} or entity began operating a ~~municipal~~ ^{or county} cable television system before the effective date of this paragraph [revisor inserts date].

SECTION 4. 66.0422 of the statutes is created to read:

66.0422 Cable television, telecommunications, and Internet access facilities. (1) In this section:

- (a) "Cable service" has the meaning given in s. 66.0419 (2) (c).
- (b) ^{Local government} ~~"Municipality"~~ means a city, village, or town. ^{county}
- (c) "Telecommunications service" has the meaning given in s. 196.01 (9m).
- (2) No ^{local government} ~~municipality~~ may enact an ordinance, authorizing the ^{local government} ~~municipality~~ to construct, own, or operate any facility for providing cable service,

or adopt a resolution

BILL

telecommunications service, or Internet access service, directly or indirectly, to the public, unless all of the following are satisfied:

- (a) The ~~municipality~~ ^{local government} holds a public hearing on the proposed ordinance.
- (b) Notice of the public hearing is given by publication of a class 3 notice under ch. 985 in the area affected by the proposed ordinance. ^{local government}
- (c) No less than 30 days before the public hearing, the ~~municipality~~ ^{local government} prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility and including a cost-benefit analysis of the facility for a period of at least 3 years.

SECTION 5. 196.196 (3) (a) of the statutes is amended to read:

196.196 (3) (a) Except to the extent expressly permitted by this section and ss. 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 and, 196.219, and 196.503, the commission may not have jurisdiction over the prices or terms and conditions for the offering of any other services, including new telecommunications services, offered by a price-regulated telecommunications utility.

SECTION 6. 196.203 (1) of the statutes is amended to read:

196.203 (1) Except as provided in this section, alternative telecommunications utilities are exempt from all provisions of ch. 201 and this chapter except s. 196.503.

SECTION 7. 196.503 of the statutes is created to read:

196.503 ~~Municipal~~ ^{Local government} telecommunications utilities. (1) DEFINITION. In this section, "~~municipal~~ ^{local government} telecommunications utility" means a municipality that owns, operates, manages, or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public.

(2) COSTS. A ~~municipal~~ ^{local government} telecommunications utility may not pass on the cost of any plant or equipment used to provide telecommunications services directly or

or an entity owned or operated, in whole or in part, by a local government telecommunications utility

BILL**INSERT 6-4**

1 indirectly to the public to any person who does not receive telecommunications
2 service from the ~~municipal~~ ^{local government} telecommunications utility, except for debt service on
3 bonds issued under s. 66.0619 to finance the construction, renovation, or expansion
4 of such plant or equipment.

5 (3) APPLICABILITY. This section does not apply to a ~~municipal~~ ^{local government}
6 telecommunications utility that began providing telecommunications service
7 directly or indirectly to the public before the effective date of this subsection
8 [revisor inserts date].

SECTION 8. Initial applicability.

10 (1) The treatment of section 66.0419 (3) (intro.) and (3g) of the statutes first
11 applies to franchises granted on the effective date of this subsection.

SECTION 9. Effective date.

13 (1) This act takes effect on the first day of the 3rd month beginning after
14 publication.

15 (END)

**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1663/4ins
MDK:.....

1

INSERT 2A:

local government to pay any cost of any telecommunications service provided by the local government. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by a local government.

2

INSERT 2B:

by the Public Service Commission (PSC) under current law

3

INSERT 2C:

Also, the bill specifies that the costs that are subject to the prohibition include personnel, plant, and equipment costs, as well as the appropriate portion of costs of personnel, plant, and equipment that are not exclusively used to provide telecommunications services.

4

INSERT 5-9:

5

For purposes of this paragraph, "costs" include the costs described in s. 196.503 (2)

6

(b).

7

INSERT 6-1:

8

(b) The costs that are subject to paragraph (a) include personnel costs and costs

9

of acquiring, installing, maintaining, repairing, or operating^a plant or equipment,

10

and include the appropriate portion of costs of personnel, plant, or equipment that

11

are not exclusively used to provide telecommunications services.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/4dn

MDK:.....

cjs

Rep. Suder:

This version is identical to the previous version, except for the following: ✓

1. The requirements in proposed ss. 66.0419 (3r), 66.0422, and 196.503 apply to counties, as well as cities, villages, and towns. I made this change after talking to Steve Beck at SBC. I assume that this change is consistent with your intent, but if it is not, please let me know. (Note that proposed s. 66.0419 (3g) applies to cities, villages, and towns, but not counties. This is consistent with current law.) ✓

2. Proposed s. 196.503 (2) is revised. Also, proposed s. 196.503 (2) (b) is created to describe the types of costs that are covered. In addition, proposed s. 66.0422 (2) (c) is revised to refer to the description of costs. ✓

Also Finally, note that Steve Beck has a different proposal regarding the language in proposed s. 196.503 (2) (a). Under his approach, the language would read something like: "A municipal telecommunications utility shall be priced to exceed its total service long-run incremental cost. Such total service long-run incremental cost shall take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by telecommunications providers that are not municipalities." Because this proposal was brought to my attention after the meeting I had with the other interested parties, I did not include Mr. Beck's proposal. Please let me know if his approach is preferable to the bill's approach. ✓

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/4dn
MDK:cjs:pg

August 19, 2003

Rep. Suder:

This version is identical to the previous version, except for the following:

1. The requirements in proposed ss. 66.0419 (3r), 66.0422, and 196.503 apply to counties, as well as cities, villages, and towns. I made this change after talking to Steve Beck at SBC. I assume that this change is consistent with your intent, but if it is not, please let me know. (Note that proposed s. 66.0419 (3g) applies to cities, villages, and towns, but not counties. This is consistent with current law.)
2. Proposed s. 196.503 (2) is revised. Also, proposed s. 196.503 (2) (b) is created to describe the types of costs that are covered. In addition, proposed s. 66.0422 (2) (c) is revised to refer to the description of costs.

Also, note that Steve Beck has a different proposal regarding the language in proposed s. 196.503 (2) (a). Under his approach, the language would read something like: "A municipal telecommunications utility shall be priced to exceed its total service long-run incremental cost. Such total service long-run incremental cost shall take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs incurred by telecommunications providers that are not municipalities." Because this proposal was brought to my attention after the meeting I had with the other interested parties, I did not include Mr. Beck's proposal. Please let me know if his approach is preferable to the bill's approach.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/5dn

MDK:/.....

g3

Rep. Suder:

This version is identical to the previous version, except that the requirements regarding the granting of cable television franchises are removed.

✓
Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

2003 BILL

D-NOTE

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- 1 AN ACT *to amend* 66.0419 (3) (intro.), 196.196 (3) (a) and 196.203 (1); and *to*
 2 *create* 66.0419 (3g), 66.0419 (3r), 66.0422 and 196.503 of the statutes; **relating**
 3 **to:** ~~cable television franchises~~ local government telecommunications utilities,
 4 and public hearings for ordinances and resolutions authorizing local
 5 government cable television, telecommunications, and Internet access
 6 facilities.

Analysis by the Legislative Reference Bureau

Under current law, cities, villages, and towns (municipalities) are granted the power to regulate cable television systems, including the power to grant franchises to persons who operate such systems and to require the payment of franchise fees. This bill limits this power when a municipality grants a franchise allowing an applicant (new entrant) to operate a cable television system in an area that is actually served by another person to whom the municipality has previously granted a franchise (existing franchisee).

The bill provides that certain terms and conditions of the franchise granted to the new entrant may be no more favorable and no less burdensome than the terms and conditions of the franchise previously granted to the existing franchisee. The terms and conditions that are subject to the bill are terms and conditions relating to the area for which service is authorized, requirements for public, educational, and governmental access channels, and franchise fees. To comply with the bill, a

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city, village, town,
municipality is allowed to adjust the terms and conditions of a franchise previously granted to an existing franchisee. In addition, with respect to terms and conditions relating to the area for which service is authorized, the bill allows a municipality to establish deadlines for a new entrant to comply on a gradual basis with such terms and conditions. The bill does not prohibit a municipality from imposing terms and conditions that are in addition to the terms and conditions of the previously granted franchise.

This bill also prohibits, with certain exceptions, a ~~municipality~~ or county (local government) that owns and operates a cable television system from requiring nonsubscribers to pay any of the costs of the system. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by such a local government. There are two exceptions to this prohibition. First, the prohibition does not apply if the cable television system began operating before the effective date of the bill. Second, a local government or entity may require nonsubscribers to pay the following costs: 1) the cost of public, educational, and governmental access channels; and 2) the cost of debt service on public improvement bonds for the construction, renovation, or expansion of the local government's cable television system.

In addition, the bill prohibits a local government from requiring persons who do not receive telecommunications service from the local government to pay any cost of any telecommunications service provided by the local government. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by a local government. The bill's prohibition applies even if the local government's provision of telecommunications service is exempt from regulation by the Public Service Commission (PSC) under current law. However, the prohibition does not apply to a local government that provided telecommunications service to the public before the bill's effective date. Also, the bill specifies that the costs that are subject to the prohibition include personnel, plant, and equipment costs, as well as the appropriate portion of costs of personnel, plant, and equipment that are not exclusively used to provide telecommunications services.

Finally, the bill prohibits a local government from enacting an ordinance authorizing the local government to construct, own, or operate any facility for providing cable television service, telecommunications service, or Internet access service, directly or indirectly to the public, unless certain requirements are satisfied. First, the local government must hold a public hearing and provide at least three notices of the hearing. Second, the local government must prepare a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility. The report must include a cost-benefit analysis of the facility for a period of at least three years. At least 30 days before the public hearing, the local government must make the report available for public inspection.

For further information see the **state and local** fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

or adopting a resolution

BILL

1 **SECTION 1.** 66.0419 (3) (intro.) of the statutes is amended to read:

2 66.0419 (3) FRANCHISES. (intro.) ~~-A- Except as provided in sub. (3g), a~~
3 municipality may operate or regulate a cable television system and in such operation
4 and regulation may, without limitation because of enumeration:

5 **SECTION 2.** 66.0419 (3g) of the statutes is created to read:

6 66.0419 (3g) DISCRIMINATION PROHIBITED. (a) In this subsection:

7 1. "Existing franchisee" means a cable operator who has been granted a
8 franchise by a municipality to provide cable service in an area.

9 2. "New entrant" means a cable operator that applies to a municipality for a
10 franchise to provide cable service in an area in which an existing franchisee is
11 actually providing cable service.

12 (b) A municipality may not grant a franchise under sub. (3) (b) to a new entrant
13 unless the terms and conditions of the franchise granted to the new entrant that
14 relate to all of the following are no more favorable and no less burdensome than the
15 terms and conditions of the franchise granted to the existing franchisee:

16 1. The area for which cable service is authorized.

17 2. Requirements for public, educational, and governmental access channels.

18 3. Franchise fees.

19 (c) A municipality may comply with par. (b) by adjusting the terms and
20 conditions of a franchise previously granted to an existing franchisee.

21 (d) Notwithstanding par. (b), a municipality may establish deadlines for a new
22 entrant to comply on a gradual basis with terms and conditions relating to the area
23 for which cable service is authorized if the deadlines are designed to result in no more
24 favorable, and no less burdensome, terms and conditions.

BILL

(e) Paragraph (b) does not prohibit a municipality from granting a franchise under sub. (3) (b) that imposes terms and conditions that are in addition to the terms and conditions specified in par. (b) 1. to 3.

SECTION 3. 66.0419 (3) of the statutes is created to read:

66.0419 (3) LOCAL GOVERNMENT CABLE TELEVISION SYSTEM COSTS. (a) Except for costs for any of the following, a municipality or county that owns and operates a cable television system, or an entity owned or operated, in whole or in part, by such a municipality or county, may not require nonsubscribers of the cable television system to pay any of the costs of the cable television system:

1. Public, educational, and governmental access channels.

2. Debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of a cable television system.

(b) This subsection does not apply to a municipality or county, or an entity owned or operated, in whole or in part, by a municipality or county, if the municipality, county, or entity began operating a cable television system before the effective date of this paragraph [revisor inserts date].

SECTION 4. 66.0422 of the statutes is created to read:

66.0422 Cable television, telecommunications, and Internet access facilities. (1) In this section:

(a) "Cable service" has the meaning given in s. 66.0419 (2) (c).

(b) "Local government" means a county, city, village, or town.

(c) "Telecommunications service" has the meaning given in s. 196.01 (9m).

(2) No local government may enact an ordinance or adopt a resolution authorizing the local government to construct, own, or operate any facility for

BILL

1 providing cable service, telecommunications service, or Internet access service,
2 directly or indirectly, to the public, unless all of the following are satisfied:

3 (a) The local government holds a public hearing on the proposed ordinance or
4 resolution.

5 (b) Notice of the public hearing is given by publication of a class 3 notice under
6 ch. 985 in the area affected by the proposed ordinance or resolution.

7 (c) No less than 30 days before the public hearing, the local government
8 prepares and makes available for public inspection a report estimating the total costs
9 of, and revenues derived from, constructing, owning, or operating the facility and
10 including a cost-benefit analysis of the facility for a period of at least 3 years. For
11 purposes of this paragraph, “costs” include the costs described in s. 196.503 (2) (b).

12 **SECTION 5.** 196.196 (3) (a) of the statutes is amended to read:

13 196.196 (3) (a) Except to the extent expressly permitted by this section and ss.
14 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 ~~and~~, 196.219, and
15 196.503, the commission may not have jurisdiction over the prices or terms and
16 conditions for the offering of any other services, including new telecommunications
17 services, offered by a price-regulated telecommunications utility.

18 **SECTION 6.** 196.203 (1) of the statutes is amended to read:

19 196.203 (1) Except as provided in this section, alternative telecommunications
20 utilities are exempt from all provisions of ch. 201 and this chapter except s. 196.503.

21 **SECTION 7.** 196.503 of the statutes is created to read:

22 **196.503 Local government telecommunications utilities. (1)**

23 **DEFINITION.** In this section, “local government telecommunications utility” means a
24 municipality or county that owns, operates, manages, or controls any plant or

BILL

1 equipment used to furnish telecommunications services within the state directly or
2 indirectly to the public.

3 (2) COSTS. (a) A local government telecommunications utility or an entity
4 owned or operated, in whole or in part, by a local government telecommunications
5 utility may not pass on any of the costs of providing telecommunications services
6 directly or indirectly to the public to any person who does not receive
7 telecommunications service from the local government telecommunications utility
8 or entity, except for debt service on bonds issued under s. 66.0619 to finance the
9 construction, renovation, or expansion of such plant or equipment.

10 (b) The costs that are subject to paragraph (a) include personnel costs and costs
11 of acquiring, installing, maintaining, repairing, or operating a plant or equipment,
12 and include the appropriate portion of costs of personnel, plant, or equipment that
13 are not exclusively used to provide telecommunications services.

14 (3) APPLICABILITY. This section does not apply to a local government
15 telecommunications utility that began providing telecommunications service
16 directly or indirectly to the public before the effective date of this subsection
17 [revisor inserts date].

SECTION 8. Initial applicability.

18
19 (1) The treatment of section 66.0419 (3) (intro.) and (3g) of the statutes first
20 applies to franchises granted on the effective date of this subsection.

SECTION 9. Effective date.

21
22 (1) This act takes effect on the first day of the 3rd month beginning after
23 publication.

24 (END)

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/5dn
MDK:cjs:pg

August 20, 2003

Rep. Suder:

This version is identical to the previous version, except that the requirements regarding the granting of cable television franchises are removed.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

D-NOTE

2003 BILL

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1 AN ACT *to amend* 196.196 (3) (a) and 196.203 (1); and *to create* 66.0419 (3m),
2 66.0422 and 196.503 of the statutes; **relating to:** local government
3 telecommunications utilities and public hearings for ordinances and
4 resolutions authorizing local government cable television,
5 telecommunications, and Internet access facilities.

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Analysis by the Legislative Reference Bureau

This bill prohibits, ~~with certain exceptions~~, a city, village, town, or county (local government) that owns and operates a cable television system from requiring nonsubscribers to pay any of the costs of the system. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by such a local government. There ~~are two exceptions~~ to this prohibition. ~~First, the prohibition does not apply if the cable television system began operating before the effective date of the bill. Second, a local government or entity may require nonsubscribers to pay the following costs: 1) the cost of public, educational, and governmental access channels; and 2) the cost of debt service on public improvement bonds for the construction, renovation, or expansion of the local government's cable television system.~~ ✓

In addition, the bill prohibits a local government from requiring persons who do not receive telecommunications service from the local government to pay any cost of any telecommunications service provided by the local government. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by a local government. The bill's prohibition applies even if the local

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government's provision of telecommunications service is exempt from regulation by the Public Service Commission (PSC) under current law. ~~However, the prohibition does not apply to a local government that provided telecommunications service to the public before the bill's effective date.~~ Also, the bill specifies that the costs that are subject to the prohibition include personnel, plant, and equipment costs, as well as ~~the appropriate portion of costs of personnel, plant, and equipment that are not exclusively used to provide telecommunications services.~~ *and other services* ✓

an Finally, the bill prohibits a local government from enacting an ordinance or adopting a resolution authorizing the local government to construct, own, or operate any facility for providing cable television service, telecommunications service, or Internet access service, directly or indirectly to the public, unless certain requirements are satisfied. First, the local government must hold a public hearing and provide at least three notices of the hearing. Second, the local government must prepare a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility. The report must include a cost-benefit analysis of the facility for a period of at least three years. At least 30 days before the public hearing, the local government must make the report available for public inspection.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 66.0419 (3m) of the statutes is created to read:

2 **66.0419 (3m) LOCAL GOVERNMENT CABLE TELEVISION SYSTEM COSTS.** ~~Except~~ ✓

3 for costs for any of the following, a municipality or county that owns and operates a
4 cable television system, or an entity owned or operated, in whole or in part, by such
5 a municipality or county, may not require nonsubscribers of the cable television
6 system to pay any of the costs of the cable television system:

7 ^(a) ~~by~~ Public, educational, and governmental access channels.

8 ^(b) ~~by~~ Debt service on bonds issued under s. 66.0619 to finance the construction,
9 renovation, or expansion of a cable television system.

10 ~~(b) This subsection does not apply to a municipality or county, or an entity~~
11 ~~owned or operated, in whole or in part, by a municipality or county, if the~~

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1 municipality, county, or entity began operating a cable television system before the
2 effective date of this paragraph [revisor inserts date]

3 **SECTION 2.** 66.0422 of the statutes is created to read:

4 **66.0422 Cable television, telecommunications, and Internet access**
5 **facilities.** (1) In this section:

6 (a) "Cable service" has the meaning given in s. 66.0419 (2) (c).

7 (b) "Local government" means a county, city, village, or town.

8 (c) "Telecommunications service" has the meaning given in s. 196.01 (9m).

9 (2) No local government may enact an ordinance or adopt a resolution
10 authorizing the local government to construct, own, or operate any facility for
11 providing cable service, telecommunications service, or Internet access service,
12 directly or indirectly, to the public, unless all of the following are satisfied:

13 (a) The local government holds a public hearing on the proposed ordinance or
14 resolution.

15 (b) Notice of the public hearing is given by publication of a class 3 notice under
16 ch. 985 in the area affected by the proposed ordinance or resolution.

17 (c) No less than 30 days before the public hearing, the local government
18 prepares and makes available for public inspection a report estimating the total costs
19 of, and revenues derived from, constructing, owning, or operating the facility and
20 including a cost-benefit analysis of the facility for a period of at least 3 years. For
21 purposes of this paragraph, "costs" include the costs described in s. 196.503 (2) (b).

22 **SECTION 3.** 196.196 (3) (a) of the statutes is amended to read:

23 196.196 (3) (a) Except to the extent expressly permitted by this section and ss.
24 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 and, 196.219, and
25 196.503, the commission may not have jurisdiction over the prices or terms and

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conditions for the offering of any other services, including new telecommunications services, offered by a price-regulated telecommunications utility.

SECTION 4. 196.203 (1) of the statutes is amended to read:

196.203 (1) Except as provided in this section, alternative telecommunications utilities are exempt from all provisions of ch. 201 and this chapter except s. 196.503.

SECTION 5. 196.503 of the statutes is created to read:

196.503 Local government telecommunications utilities. (1)

DEFINITION. In this section, “local government telecommunications utility” means a municipality or county that owns, operates, manages, or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public.

(2) COSTS. (a) A local government telecommunications utility or an entity owned or operated, in whole or in part, by a local government telecommunications utility may not pass on any of the costs of providing telecommunications services directly or indirectly to the public to any person who does not receive telecommunications service from the local government telecommunications utility or entity, except for debt service on bonds issued under s. 66.0619 to finance the construction, renovation, or expansion of such plant or equipment.

(b) The costs that are subject to paragraph (a) include personnel costs and costs of acquiring, installing, maintaining, repairing, or operating a plant or equipment, and include ^{an} ~~the~~ ^{allocated} appropriate portion of costs of personnel, plant, or equipment that are ~~not exclusively~~ ^{both} used to provide telecommunications services. ✓

(3) ~~APPLICABILITY. This section does not apply to a local government telecommunications utility that began providing telecommunications service~~

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and other services

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1 ~~directly or indirectly to the public before the effective date of this subsection~~

2 [revisor inserts date].

3 **SECTION 6. Effective date.**

4 (1) This act takes effect on the first day of the 3rd month beginning after
5 publication.

6 (END)

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**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-1663/6ins
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INSERT 5-2:

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SECTION 1. Initial applicability.

3

(1) LOCAL GOVERNMENT COSTS. The treatment of sections 66.0419 (3) and 196.503

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of the statutes first applies to costs incurred on the effective date of this subsection.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/6dn

MDK:.....

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Rep. Suder:

This version makes a change to proposed s. 196.503 (2) (b). After speaking with Cal Simshaw of CenturyTel, I agreed that that there was a logical problem in the way that this provision was previously drafted. I think the language in this version achieves the intent of all the parties.

Also, I received an instruction from Lorenzo Cruz of CenturyTel to eliminate the "grandfather" provisions regarding costs and make those provisions apply on a "going forward" basis. This is accomplished by deleting proposed sections 66.0419 (3m) (b) and 196.503 (3) from the previous version and by creating the initial applicability provision.

If the above changes are not consistent with your intent, please contact me.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/6dn
MDK:cjs:pg

September 4, 2003

Rep. Suder:

This version makes a change to proposed s. 196.503 (2) (b). After speaking with Cal Simshaw of CenturyTel, I agreed that that there was a logical problem in the way that this provision was previously drafted. I think the language in this version achieves the intent of all the parties.

Also, I received an instruction from Lorenzo Cruz of CenturyTel to eliminate the "grandfather" provisions regarding costs and make those provisions apply on a "going forward" basis. This is accomplished by deleting proposed sections 66.0419 (3m) (b) and 196.503 (3) from the previous version and by creating the initial applicability provision.

If the above changes are not consistent with your intent, please contact me.

Mark D. Kunkel
Senior Legislative Attorney
Phone: (608) 266-0131
E-mail: mark.kunkel@legis.state.wi.us

Kunkel, Mark

From: BLAVAT, KATHRYN R (AIT) [kb8582@sbccom]
Sent: Thursday, September 04, 2003 11:28 AM
To: BECK, STEVE (Legal); 'Lorenzo.cruz@centurytel.com'; 'calvin.simshaw@centurytel.com'; mark.kunkel@legis.state.wi.us
Cc: REED, HOLLY (AIT)
Subject: Call today on muni. bill

Per the request of Tom Moore, SBC and Century Tel, I am setting up a conference call today with the above group to discuss details of The Muni Telco/Cable bill.

The call will be at 2:30 today WI time.

The call in number is:

312-798-2510

The code you will be prompted to enter will be:
2705910#

Thank you!

Kate Blavat
SBC

Dir. Gov. Affairs
608-252-6788

Privileged and Confidential

For Use and Review of Authorized SBC Personnel

This message contains information that is a privileged work product or exempt from disclosure under applicable law. This message is provided in response to a request. In order to preserve the privileged nature of this message, it should be used and reviewed only by authorized SBC personnel or agents with a need to know. If you have received this message in error, please immediately notify the sender at (608) 252-6788 and delete this email message from your computer. Thank you.

Kunkel, Mark

From: BLAVAT, KATHRYN R (AIT) [kb8582@sbccom]
Sent: Friday, September 05, 2003 11:59 AM
To: 'Mark.Kunkel@legis.state.wi.us'
Cc: 'Lorenzo.cruz@centurytel.com'; 'temoore@chartermi.net'; REED, HOLLY (AIT); BECK, STEVE (Legal)
Subject: Muni bill
Importance: High

Mark,

SBC Wisconsin continues to support the alternative you stated below. One other item that continues to concern me is that the bill, as currently drafted and under the alternative, does not appear to cover telecom providers that are separate legal entities from the municipality, but controlled and aided by the municipality. I.e., if the municipality were to own all the equity (stock or otherwise) in a telecom provider that is a separate legal entity, then I think that provider may well skirt this requirement, as written because one could argue that the municipality does not own, control or manage the telecommunications assets, and the entity that does own, control and manage them is not a municipality or a county. Thus, I suggest one other revision: The definition of "local government telecommunications utility" should probably be broadened to include telecommunications providers controlled by municipalities, with language similar to that found in 196.377(2)(a)3. I propose the following revised definition:

(1) DEFINITION. In this section, "local government telecommunications utility" means a telecommunications provider that satisfies both of the following requirements:

- (a) it is a municipality or county or that is wholly owned, controlled, managed or operated by a municipality or county, and
- (b) it owns, operates, manages, or controls any plant or equipment used to furnish telecommunications services within the state directly or indirectly to the public.

Thanks for all of your time on this Mark!!!!

Kate Blavat
SBC

Dir. Gov. Affairs
608-252-6788

Privileged and Confidential

For Use and Review of Authorized SBC Personnel

This message contains information that is a privileged work product or exempt from disclosure under applicable law. This message is provided in response to a request. In order to preserve the privileged nature of this message, it should be used and reviewed only by authorized SBC personnel or agents with a need to know. If you have received this message in error, please immediately notify the sender at (608) 252-6788 and delete this email message from your computer. Thank you.

D-NOTE

2003 BILL

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- 1 AN ACT *to amend* 196.196 (3) (a) and 196.203 (1); and *to create* 66.0419 (3m),
 2 66.0422 and 196.503 of the statutes; **relating to:** local government
 3 telecommunications utilities and public hearings for ordinances and
 4 resolutions authorizing local government cable television,
 5 telecommunications, and Internet access facilities.

Analysis by the Legislative Reference Bureau

This bill prohibits a city, village, town, or county (local government) that owns and operates a cable television system from requiring nonsubscribers to pay any of the costs of the system. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by such a local government. There is one exception to this prohibition. A local government or entity may require nonsubscribers to pay the following costs: 1) the cost of public, educational, and governmental access channels; and 2) the cost of debt service on public improvement bonds for the construction, renovation, or expansion of the local government's cable television system.

In addition, ~~the bill prohibits a local government from requiring persons who do not receive telecommunications service from the local government to pay any cost of any telecommunications service provided by the local government. The prohibition also applies to any entity owned, operated, or controlled, in whole or in part, by a local government. The bill's prohibition applies even if the local government's provision of telecommunications service is exempt from regulation by~~

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the Public Service Commission (PSC) under current law. Also, the bill specifies that the costs that are subject to the prohibition include personnel, plant, and equipment costs, as well as an appropriate allocated portion of costs of personnel, plant, and equipment that are used to provide jointly both telecommunications services and other services.

~~Finally~~ ^{also} the bill prohibits a local government from enacting an ordinance or adopting a resolution authorizing the local government to construct, own, or operate any facility for providing cable television service, telecommunications service, or Internet access service, directly or indirectly to the public, unless certain requirements are satisfied. First, the local government must hold a public hearing and provide at least three notices of the hearing. Second, the local government must prepare a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility. The report must include a cost-benefit analysis of the facility for a period of at least three years. At least 30 days before the public hearing, the local government must make the report available for public inspection.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

✓
1 **SECTION 1.** 66.0419 (3m) of the statutes is created to read:

2 66.0419 (3m) LOCAL GOVERNMENT CABLE TELEVISION SYSTEM COSTS. Except for
3 costs for any of the following, a municipality or county that owns and operates a cable
4 television system, or an entity owned or operated, in whole or in part, by such a
5 municipality or county, may not require nonsubscribers of the cable television system
6 to pay any of the costs of the cable television system:

7 (a) Public, educational, and governmental access channels.

8 (b) Debt service on bonds issued under s. 66.0619 to finance the construction,
9 renovation, or expansion of a cable television system.

✓
10 **SECTION 2.** 66.0422 of the statutes is created to read:

11 **66.0422 Cable television, telecommunications, and Internet access**
12 **facilities. (1)** In this section:

BILL

(a) "Cable service" has the meaning given in s. 66.0419 (2) (c).

(b) "Local government" means a county, city, village, or town.

(c) "Telecommunications service" has the meaning given in s. 196.01 (9m).

(2) No local government may enact an ordinance or adopt a resolution authorizing the local government to construct, own, or operate any facility for providing cable service, telecommunications service, or Internet access service, directly or indirectly, to the public, unless all of the following are satisfied:

(a) The local government holds a public hearing on the proposed ordinance or resolution.

(b) Notice of the public hearing is given by publication of a class 3 notice under ch. 985 in the area affected by the proposed ordinance or resolution.

(c) No less than 30 days before the public hearing, the local government prepares and makes available for public inspection a report estimating the total costs of, and revenues derived from, constructing, owning, or operating the facility and including a cost-benefit analysis of the facility for a period of at least 3 years. ~~For purposes of this paragraph, "costs" include the costs described in s. 196.503 (2) (b).~~

INSERT
3-15

SECTION 3. 196.196 (3) (a) of the statutes is amended to read:

~~196.196 (3) (a) Except to the extent expressly permitted by this section and ss. 196.19 (1m), 196.194, 196.195, 196.20 (1m), 196.204, 196.209 and, 196.219, and 196.503, the commission may not have jurisdiction over the prices or terms and conditions for the offering of any other services, including new telecommunications services, offered by a price-regulated telecommunications utility.~~

SECTION 4. 196.203 (1) of the statutes is amended to read:

~~196.203 (1) Except as provided in this section, alternative telecommunications utilities are exempt from all provisions of ch. 201 and this chapter except s. 196.503.~~

INSERT 3-25

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INSERT 4-1

1 **SECTION 5.** 196.503 of the statutes is created to read:

2 **196.503 Local government telecommunications utilities. (1)**

3 DEFINITION. In this section, "local government telecommunications utility" means a
4 municipality or county that owns, operates, manages, or controls any plant or
5 equipment used to furnish telecommunications services within the state directly or
6 indirectly to the public.

7 (2) COSTS. (a) A local government telecommunications utility or an entity
8 owned or operated, in whole or in part, by a local government telecommunications
9 utility may not pass on any of the costs of providing telecommunications services
10 directly or indirectly to the public to any person who does not receive
11 telecommunications service from the local government telecommunications utility
12 or entity, except for debt service on bonds issued under s. 66.0619 to finance the
13 construction, renovation, or expansion of such plant or equipment.

14 (b) The costs that are subject to paragraph (a) include personnel costs and costs
15 of acquiring, installing, maintaining, repairing, or operating a plant or equipment,
16 and include an appropriate allocated portion of costs of personnel, plant, or
17 equipment that are used to provide jointly both telecommunications services and
18 other services.

19 **SECTION 6. Initial applicability.**

20 (1) ~~LOCAL GOVERNMENT COSTS.~~ The treatment of sections 66.0419 (3m) and
21 ~~196.503~~ of the statutes first applies to costs incurred on the effective date of this
22 subsection.

23 **SECTION 7. Effective date.**

INSERT 4-28

BILL

1 (1) This act takes effect on the first day of the 3rd month beginning after
2 publication.

3 (END)

INSERT 1A:

current law requires telecommunications services and basic network functions of telecommunications utilities to be priced to exceed their total service long-run incremental costs. This bill specifies that, for a telecommunications utility that is a local government, total service long-run incremental cost^s must take into account, by imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way, licenses, and similar costs that are incurred by telecommunications utilities that are not local governments. Also, under current law, the Public Service Commission (PSC) may, under certain circumstances, waive the requirement that prices must exceed total service long-run incremental costs. The bill prohibits the PSC from waiving the requirement for a telecommunications utility that is a local government. In addition, under current law, certain small telecommunications utilities are exempt from the requirement. The bill eliminates the exemption for a telecommunications utility that is a local government. Also, the bill specifies that a telecommunications utility that is a local government is subject to the requirement even if the telecommunications utility is an alternative telecommunications utility that is otherwise exempt from PSC regulation under current law.

INSERT 3-15:

The costs that are subject to this paragraph include personnel costs and costs of acquiring, installing, maintaining, repairing, or operating any plant or equipment, and include an appropriate allocated portion of costs of personnel, plant, or equipment that are used to provide jointly both telecommunications services and other services.

make sure that this comes into analysis with normal analysis formatting

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INSERT 3-25:

SECTION 1. 196.203 (1) of the statutes is amended to read:

196.203 (1) ~~Except as provided in this section, alternative~~ Alternative
telecommunications utilities are exempt from all provisions of ch. 201 and this
chapter, except as provided in this section and except that an alternative
telecommunications utility that is a local government telecommunications utility, as
defined in s. 196.204 (5) (ag) 1., is subject to s. 196.204 (5).

History: 1985 a. 297; 1993 a. 496; 1997 a. 140; 1999 a. 150.

INSERT 4-1:

✕
SECTION 2. 196.204 (5) (a) of the statutes is renumbered 196.204 (5) (ar) and
amended to read:

196.204 (5) (ar) In addition to the other requirements of this section, each
telecommunications service, relevant group of services, and basic network function
offered or used by a telecommunications utility shall be priced to exceed its total
service long-run incremental cost. For a local government telecommunications
utility, such total service long-run incremental cost shall take into account, by
imputation or allocation, equivalent charges for all taxes, pole rentals, rights of way,
licenses, and similar costs that are incurred by nongovernmental
telecommunications utilities. The commission may waive the applicability of this
paragraph to a nongovernmental telecommunications utility's basic local exchange
service if the commission determines that a waiver is consistent with the factors
under s. 196.03 (6).

History: 1985 a. 297; 1993 a. 496.

✓
SECTION 3. 196.204 (5) (ag) of the statutes is created to read:

196.204 (5) (ag) In this subsection:

1 1. "Local government telecommunications utility" means a municipality or
2 county that owns, operates, manages, or controls any plant or equipment, or that
3 wholly owns, operates, manages, or controls any entity that owns, operates,
4 manages, or controls any plant or equipment, used to furnish telecommunications
5 services within the state directly or indirectly to the public.

6 2. "Nongovernmental telecommunications utility" means a
7 telecommunications utility that is not a local government telecommunications
8 utility.

✕

9 **SECTION 4.** 196.204 (5) (b) of the statutes is amended to read:

10 196.204 (5) (b) Unless ordered by the commission, par. (a) (ar) does not apply
11 to basic local exchange service or to business access line and usage service within a
12 local calling area offered by a nongovernmental telecommunications utility with
13 150,000 or less access lines in use in this state. If par. (a) (ar) does not apply, the
14 nongovernmental telecommunications utility may not reduce its rates for basic local
15 exchange service below the monthly rate under s. 196.215 (7) or total service
16 long-run incremental cost, whichever is lower, and may not reduce its rates for
17 business access line and usage service within a local calling area below total service
18 long-run incremental cost.

History: 1985 a. 297; 1993 a. 496.

INSERT 4-22:

20 ~~(2)~~ The treatment of section 196.204 (5) (a), (ag), and (b) of the statutes first
21 applies to services, groups of services, or basic network functions offered or used on
22 the effective date of this subsection.

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/7dn

MDK:/:....

js

Rep. Suder:

Please review this version of the bill to make sure that it achieves your intent. Note that I added the language regarding total service long-run incremental costs to s. 196.204 (5), rather than creating a new provision.

✓

Mark D. Kunkel
Senior Legislative Attorney
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E-mail: mark.kunkel@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1663/7dn
MDK:cjs:pg

September 9, 2003

Rep. Suder:

Please review this version of the bill to make sure that it achieves your intent. Note that I added the language regarding total service long-run incremental costs to s. 196.204 (5), rather than creating a new provision.

Mark D. Kunkel
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Emery, Lynn

From: Emerson, Anne
Sent: Wednesday, September 10, 2003 1:54 PM
To: LRB.Legal
Subject: Draft review: LRB 03-1663/7 Topic: Municipal authority regarding multiple franchises for cable television; municipal telecommunications utility costs

It has been requested by <Emerson, Anne> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-1663/7 Topic: Municipal authority regarding multiple franchises for cable television; municipal telecommunications utility costs